

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.32176 of 2023

Arising Out of PS. Case No.-94 Year-2020 Thana- MAHILA PS District- Buxar

Mukesh Tiwari @ Mukesh Kumar Tiwari Son of Dhananjay Tiwari R/o
village - Matakipur, P.S.- Dhansoin, District - Buxar.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ramakant Sharma, Sr. Advocate Mr. Arvind Kumar Pradhan, Advocate
For the Opposite Party/s	:	Mr. Brajendra Nath Pandey, APP
For the Informant/s	:	Mr. Surendra Kumar Chaube, Advocate

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

2 28-06-2023 Heard learned counsel appearing on behalf of the
petitioner and learned counsel appearing on behalf of the State.

Let the defect(s), if any, be removed within a period
of four weeks from today.

The petitioner seeks bail in connection with Buxar
Mahila P.S. Case No. 94 of 2020 registered for the offence
under Sections 376, 313, 420 and 506 of the Indian Penal Code
(in short 'I.P.C.').

The accused/petitioner is named in the F.I.R. and is in
custody since 14.02.2023.

The allegation against the petitioner is to commit rape
upon informant/victim, on false pretext to provide a job of
manager in stitching centre at Buxar town, on several occasions



between year 2019-20. It is further alleged that informant/victim becomes pregnant and her pregnancy was terminated by this petitioner on 01.01.2020 in capacity of husband, subsequently, on 01.09.2020, petitioner again committed rape upon informant, while she was alone in her house at about 2:00 P.M. and when she was crying after the occurrence, her father enquired about the reason, occurrence was narrated to him, causing to lodge present F.I.R.

Learned senior counsel, Mr. Ramakant Sharma while appearing on behalf of the petitioner submitted that the narration of F.I.R. is not suggesting that allegation can be categorized as rape for the simple reason that on several occasions, physical relation, was established between petitioner and informant out of consent. It is submitted that the narration of F.I.R. is suggesting that the informant/victim was not in contact with her husband for last three years and out of that she developed friendly relations with this petitioner out of which physical relations was established on several occasions and when this petitioner refused to marry her, the present false implication was raised. It is submitted that even the narration of F.I.R. is suggesting that termination of pregnancy of informant was in presence of this petitioner, where his relation was shown as



husband on medical prescriptions. During the course of argument, by taking note of the fact of this case, learned senior counsel relied upon the report of *Hon'ble Supreme Court* in the matter of *Pramod Suryabhan Pawar vs. State of Maharashtra* as reported in *AIR 2019 Supreme Court 4010*. While concluding the argument, it has been submitted that investigation of this case has been completed, for which, charge-sheet has been submitted, as such, there is no chance of tampering with the evidence.

Learned APP duly assisted by learned counsel, Mr. Surendra Kumar Chaube appearing on behalf of the informant, while opposing the prayer of bail, submitted that the petitioner is cousin uncle of the informant/victim and on false pretext to provide her job in a stitching centre, the present occurrence committed upon. It is conceded while opposing the prayer of bail that petitioner is a major married lady and is a mother of two children. It is also submitted that victim supported the occurrence through her statement recorded under Section 164 of the Cr.P.C. It is also submitted that informant/victim, who developed her pregnancy out of said relation was terminated by this petitioner, presenting himself as husband.

Considering the facts and circumstances as mentioned



above and by taking note of the fact as informant/victim being major and married women found indulged in physical relation on several occasions since 2019-20, suggesting, *prima facie*, that physical relation was established out of consent coupled with the fact that charge-sheet has already submitted, where petitioner is in custody since 14.02.2023, accordingly, above named petitioner is directed to be released on bail in connection with Mahila Buxar P.S. Case No. 94 of 2020 on furnishing bail bond of Rs.10,000/- (Rupees Ten Thousand only) with two sureties of the like amount each to the satisfaction of learned Chief Judicial Magistrate, Buxar/concerned court, subject to the conditions as mentioned under Section 437 (3) of the Cr.P.C. with further conditions:

“(i) That the petitioner shall not interact with informant/victim or any of the prosecution witnesses within the course of trial so as to influence them.

(ii) That accused/petitioner shall cooperate in the trial and shall be physically present on each and every date before the learned Trial Court till



the conclusion of trial and exemption from physical appearance be allowed by the learned Trial Court, only on medical ground of the petitioner duly supported by the documents.

(iii) That one of the bailors shall be deponent of the present bail petition.”

(Chandra Shekhar Jha, J)

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